

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion to make adjustments to the universal service fund mechanism established in NUSF-26,

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate whether the zones established in Docket No. C-2516 are appropriate in light of NUSF-26 findings and conclusions.

Application No. NUSF-50
Progression Order No. 3

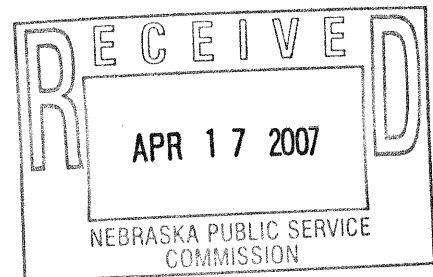
Application No. C-3554/PI-112

**UNITED TELEPHONE COMPANY OF THE WEST d/b/a EMBARQ'S
NOTICE OF FILING COMMENTS**

The undersigned hereby certifies that a true and correct copy of the Comments of United Telephone Company of the West d/b/a Embarq and a copy of this Notice was sent via electronic mail and regular United States mail, postage prepaid, on this 17th day of April, 2007, to the following:

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UNITED TELEPHONE COMPANY OF THE
WEST d/b/a EMBARQ

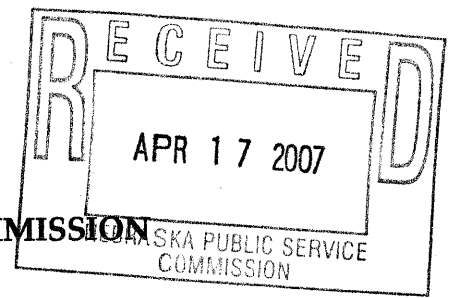
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Application No. C-3554/PI-112

**COMMENTS OF UNITED TELEPHONE COMPANY
OF THE WEST d/b/a EMBARQ**

United Telephone Company of the West d/b/a Embarq respectfully submits these comments in response to the issues set forth in the Commission's order in the above referenced dockets, entered on February 13, 2007. Embarq recommends that the Commission not adopt the methodology that Staff proposes in this docket.

The Commission seeks in this docket to determine whether it should establish additional unbundled network element ("UNE") zones and adjust the per-line Nebraska universal service fund ("NUSF") support that is ported to competitive local exchange carriers ("CLECs"). Specifically, the Commission requests comments on

Staff's proposal to bifurcate each of the three existing UNE zones into in-town and out-of-town areas, effectively creating six UNE zones. Under Staff's proposal, per-line NUSF support that is ported to CLECs serving customers through the use of UNEs would be adjusted to reflect the changes in the NUSF distribution mechanism ordered by the Commission in NUSF-50 on December 19, 2006. Embarq appreciates the opportunity to comment in these proceedings.

Staff proposes a unifying methodology ("UM") which seeks to develop UNE loop rates that are consistent with the support areas determined in NUSF-26. The UM would deaverage the current UNE loop rates into rates in-town and out-of-town loops for each existing zone, consistent with how NUSF support is distributed. It is unclear to Embarq exactly what goals the Commission wishes to accomplish by further disaggregating the existing UNE zones into in-town and out-of-town regions. Whatever the Commission's intentions, Embarq submits that the Staff's plan will ultimately create a disincentive for UNE-based CLECs to offer service outside the city center.

Attachment B to the Commission's Order in these proceedings shows the application of the UM to Qwest. The current UNE rates in Qwest's territory are \$12.14 for Zone 1, \$28.11 in Zone 2, and \$62.49 in Zone 3. Under the UM, the proposed UNE loop rates in the in-town zones are \$10.97 for Zone 1, \$9.33 in Zone 2, and \$9.93 in Zone 3, which are a significant decrease. The proposed rates for the out-of-town zones are

\$31.53 for Zone 1, \$93.19 for Zone 2, and \$172.95 for Zone 3, or significantly higher than rates CLECs are currently paying. If implemented, it is likely that these proposed rates would effectively eliminate the potential for competition in the out-of-town zones. It is questionable whether any CLEC would be willing to pay the out-of-town UNE loop rates (up to \$172.95 per month), even with ported NUSF support, as there is little likelihood that the CLEC would be able to earn a profit on these lines.

The most likely result of implementing Staff's UM is that CLECs will concentrate their efforts in the in-town zones to an even greater extent than they do today. Staff's UM would allow CLECs to purchase the loop from the incumbent local exchange carrier ("ILEC") in the in-town zones at substantially lower rates and use that line to provide service at a rate that is competitive with the ILEC. While this scenario might benefit consumers in the in-town regions, the Commission should ask itself this question: Is it really necessary to find additional ways to create incentives for competition in the lowest-cost areas, particularly when those incentives impose costs in the form of eliminating the potential for competition in higher-cost areas?

Furthermore, the Commission must consider in its decision additional costs resulting from the fact that, as more and more low cost in-town customers would be served by UNE-based CLECs, ILECs would be left with serving only the higher cost out-of town access lines. And the per-line cost of serving these out-of-town customers

would actually increase due to the lost economies of scale that the ILEC would experience as its market-share erodes further in the lowest-cost areas.

Embarq recommends that the Commission not adopt Staff's UM. The proposed UNE rates for the out-of-town zones will be extremely high, making it unlikely that any CLEC would be able to profitably serve those customers, even with the availability of ported NUSF support. Thus, if the Staff's intent is to spur competition in Nebraska's rural areas, this proposal misses the mark.

Staff's alternative to the six zone configuration is a four zone configuration where all in-town loops make up Zone 1, while the out-of-town loops would make up Zones 2, 3, and 4. This alternative suffers from the same flaws as the six zone configuration. The problem with the proposal is not with the number of UNE zones being proposed, the problem is with the Commission's desire to create UNE zones for the in-town and out-of-town geographic areas. The four zone proposal perpetuates the problems of high out-of-town UNE loop rates, which will discourage CLECs from offering service to customers in those areas. Embarq recommends the Commission not adopt Staff's four zone alternative.

Staff asks the Commission to consider several issues regarding the porting of NUSF support. Embarq provides the following comments regarding those specific issues:

- 1. Whether to continue to port NUSF support in out of town areas in zone 3 to competitive local exchange carriers or does such porting**

- result in artificially sustained competition by the NUSF high-cost program; or
2. Whether to grandfather existing lines in Zone 3 out-of-town areas but not support new lines and
 - a. Whether the grandfathering process should be permanent or
 - b. For a fixed period of time; or
 3. Whether to phase out Zone 3 out-of-town NUSF support entirely over a period of time.

Embarq submits that, if the Commission expands the number of UNE zones from three to six by using in-town and out-of-town geographic areas, the issue of porting NUSF support in out-of-town areas in Zone 3 will, in all likelihood, become moot. Expanding the number of UNE zones to in-town and out-of-town geographic areas will cause the UNE loop rates for out-of-town Zone 3 lines to be so high that virtually no CLEC would find it profitable to serve customers in out-of-town Zone 3, even with ported NUSF support.

Staff also proposes that, if its UM is not considered further by the Commission or is not adopted in a timely manner, the Commission should eliminate ported NUSF support in Zones 1 and 2. Further, the ported Zone 2 support would be grandfathered for existing customer lines. Embarq supports Staff's proposal to eliminate ported NUSF support in Zone 1, given that little NUSF support is provided to ILECs for lines in that zone. Embarq also supports the proposal that ported NUSF support for Zone 2 be grandfathered for existing access lines.

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For the reasons states in these comments, Embarq urges the Commission not to adopt the Staff's UM in this docket.

Respectfully submitted this 17th day of April, 2007.

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